IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.MC.No. 3749 of 2006()

CC.485/2005 of J.F.C.M, KOTHAMANGALAM

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PETITIONER: ACCUSED 1 & 2

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1. OUSEPH, AGED 66 YEARS, S/O. THOMAS,
   PERUMAYAN VEEDU, KANJOOR VILLAGE.

2. SHAJI, S/O. OUSEPH,
   PERUMAYAN VEEDU, KANJOOR VILLAGE.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REP. BY
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. BINDU JOSE, D/O. JOSEPH,
   ARAKKAKUDI HOUSE, KUTHUKUZHY KARA,
   KOTHAMANGALAM VILLAGE.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER
SRI.S.PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3749 of 2006

Dated this the 2nd day of March, 2007

ORDER

Petitioners are accused 2 and 3 in a prosecution under Section 498 A read with 34 I.P.C. Altogether there are 3 accused persons. The 1st accused is the husband of the defacto complainant. The petitioners are father-in-law and brother-in-law of the defacto complainant. Cognizance has been taken on the basis of a final report submitted by the police. Proceedings were initiated before the police on a complaint filed by the defacto complainant. The defacto complainant had alleged that all the 3 accused persons have been guilty of matrimonial cruelty of the culpable variety against her. The petitioners have already appeared before the learned Magistrate. They have come before this Court with a prayer to invoke the powers under Section 482 Cr.P.C to quash the proceedings.

2. What is the reason ? It is not disputed that the averments in the complaint, that is the F.I statement (Annexure-A) do not reveal any offence punishable under Section 498 A I.P.C. The case diary statement of the defacto complainant has been produced as Annexure-B. Wound certificate has been produced as Annexure-C. The crux of the contention is that there is incongruity between the versions in

Annexures-A,B & C. The alleged incongruity is about the precise place where the alleged cruel conduct of assault was resorted to by the accused persons. While from the averments in the complaint and the alleged cause narrated in Annexure-C it would appear that the alleged incident took place at the Nedumbassery Airport, the statement given by the defacto complainant before the police in the course of investigation would suggest that the culpable conduct commenced at the Airport and had continued and culminated at the house of the defacto complainant.

3. I am not satisfied that this alleged incongruity in details in the version of the complainant is sufficient justification for this Court to invoke the powers under Section 482 Cr.P.C. I am satisfied that this Crl.M.C cannot in these circumstances succeed.

4. The learned counsel for the petitioners submits that the 1st accused is an old person, now aged about 70 years. He is sick also. The 2nd petitioner is employed abroad. In these circumstances, the counsel submits that unnecessary insistence on the personal appearance of the petitioners before the learned Magistrate on all dates of posting is likely to cause great hardship and prejudice to the petitioners. I find no reason why the petitioners cannot apply for exemption from personal appearance. I do not also find any reason

why such unnecessary insistence on the personal appearance of the petitioners should be made by the learned Magistrate. Only if personal presence of the petitioners is necessary for effective further progress of the case, then alone, need the personal presence of the accused persons be insisted by the learned Magistrate.

5. This Crl.M.C is dismissed, with the above observations.

(R.BASANT, JUDGE)

rtr/-